

**REMARKS:**

Prior to entry of this Amendment, claims 2-5, 8-16, 19-26, 28, 71, 92-94 and 98-102 are pending. Of those claims, claims 2-5, 8-16, 19-26, 28, 71, 92-93, 99 and 101 are allowed. Applicant thanks the Examiner for this indication of allowable subject matter.

Remaining claims 94, 98, 100 and 101, which are all independent claims, are rejected. More particularly, these claims are rejected under 35 USC Section 103(a) as being unpatentable over Persson et al. (US 6,085,107, hereinafter "Persson") in view of Butovitsch et al. (US 6,259,927, hereinafter "Butovitsch").

The foregoing rejection is respectfully disagreed with, and is traversed below.

As noted above, the Examiner rejects independent claim 94 in view of Persson in combination with Butovitsch. Referring first to Persson, the Examiner has referred to column 4, line 50 to column 5 line 14. The Examiner has asserted that there is a disclosure of the first station (the base station) having a mode of operation in which the first station is arranged to transmit information intended for different second stations (mobile stations) on the common CDMA channel at different power levels.

Applicant respectfully disagrees with the Examiner's analysis of Persson. In particular, the base station is in communication with three mobile stations in the passage noted by the Examiner. There is also disclosure that the base station is using a certain power level associated with each of these base stations. However, this is the usual situation for dedicated channels. There is no suggestion or disclosure that the transmission to the mobile stations is on a common channel and that different power is used for different mobile stations in that common channel.

In Persson, the CDMA channels are defined by a spreading code. The different CDMA channels will share a common radio resource which is defined by a particular frequency.

Applicant's independent claim 94 recites a "common CDMA channel."

As stated on page 6, lines 17 to 20 of the subject application, a mobile station (for example) will receive all the packets sent in the common channel and is able to identify the packets which are intended for it from the information identifying the mobile station. This is a definition of a common channel that the skilled person would understand. In other words, a common channel is a channel (for example) over which the information transmitted can be received by a mobile station, regardless of whether that information is specifically intended for that mobile station. The concept of a common channel is very well known and widely used in the field of wireless communications and is therefore well understood to the skilled person.

In the context of the Persson arrangement, each of the mobile stations would be using a different spreading code and thus would be defining a unique (dedicated) channel. In the context of a CDMA system, a common channel would be used by more than one mobile station but with the same spreading code. This is not discussed in the passage referred to the Examiner.

Whilst Applicant does not believe that amendments to the claims are necessary, Applicant has clarified independent claims 94, 98, 100 and 101 to recite "said common CDMA channel being a forward transport channel" to expedite prosecution.

To the extent that more than one mobile station uses a common frequency, but with different spreading codes, this does not constitute a common CDMA forward transport channel.

Accordingly, there is no disclosure or suggestion in Persson of, for example, the "first station having a mode of operation in which said first station is arranged to transmit information intended for different second stations on the common CDMA channel at different power levels" as recited in Applicant's independent claim 94.

We further respectfully note that the Examiner has acknowledged that the feature of the "network further comprising a radio network controller, which is arranged to supply power information to

said first station as the power to be used for said information” (which also is recited in Applicant’s independent claim 94) is also not disclosed in Persson.

The Examiner has cited Butovitsch in combination with Persson. It is respectfully asserted that Butovitsch does not cure the shortcomings of Persson and thus does not disclose or suggest Applicant’s independent claim 94. In particular, Butovitsch describes an arrangement where a radio network controller controls the downlink transmit power of two base stations which are communicating simultaneously to a mobile station. This occurs when the mobile is in soft hand off situations. The RNC controls the power of the two base stations depending on the reports from these two base stations.

Accordingly, Butovitsch also does not disclose or suggest a mode of operation in which the first station is arranged to transmit information intended for different second stations on the common CDMA channel at different power levels.

Furthermore, there is no suggestion or disclosure in Butovitsch that the RNC is arranged to supply power information to the first station as to the power to be used for that information transmitted on the common channel. In other words, Butovitsch does not provide information which indicates to the base station what the individual power requirements are for the different mobile stations which are using the same common channel. The cited document is concerned with a scenario where two base stations are in communication with a single mobile station at the same time.

Since neither of the two documents disclose the recited feature of independent claim 94 that the “first station is arranged to transmit information intended for different second stations on the common CDMA channels at different power levels, said network further comprising a radio network controller which is arranged to supply power information to said first station as to the power to be used for said information,” it is submitted that there is no motivation for the skilled person to combine the two documents in an attempt to arrive at this subject matter. Moreover, even if the skilled person did combine the two documents, Applicant’s claimed invention would

not be disclosed or suggested. Nor is there any reason to combine and modify the teachings of these references in an attempt to arrive at this subject matter.

Accordingly, independent claim 94 is patentable in view of the cited art, and thus this claim should be allowed.

Similarly, independent claims 98, 100 and 101 are amended to also recite "said common CDMA channel being a forward transport channel." These independent claims also are patentable in view of the cited art as the cited references do not disclose or suggest Applicant's claimed method, radio network controller and apparatus as recited in claims 98, 100 and 101, respectively, including the afore-cited features. As explained above, nor is there any reason to combine and modify the cited references in an attempt to arrive at Applicant's claims.

Accordingly, for at least the above reasons, claims 94, 98, 100 and 101 are patentable in view of the cited art and should be allowed. Thus, the Examiner is kindly requested to reconsider and withdraw the outstanding rejection of claims 94, 98, 100 and 101.

Lastly, in the outstanding Office Action, the Examiner indicates that Applicant's IDS filed on March 9, 2009 did not include a copy of all of the cited documents and thus has been placed in the file, but not considered. Applicant respectfully points out that, as indicated on the submitted 1449 form, an Abstract (in English) of the two JP citations was believed to be attached to the March 9, 2009 IDS. This IDS also included a copy of the JP counterpart application Office Action, which cited the afore-referenced two JP references.

For the Examiner's convenience and to ensure consideration by the USPTO, Applicant attaches hereto an English Abstract of JP 09-107328 (cited on the afore-referenced 1449 form) and a copy of the full document in Japanese. Also attached is an English Abstract of JP 08-223112 (cited in the afore-referenced 1449 form) and a copy of the full document in Japanese. For completion, also attached is an English Abstract of JP 11075253A and copy of the full document in Japanese, which was also cited in the afore-referenced, submitted JP counterpart Office

S.N.: 09/980,377  
Art Unit: 2618

Action. See also Applicant's IDS dated October 24, 2008 referencing this document. A new 1449 form citing these documents is attached and the Examiner is kindly requested to consider and return an initialed copy to Applicant. Although a fee is not believed to be required for submission of these documents, should a fee be required, the USPTO is authorized to charge Applicant's deposit account no. 50-1924. It is further respectfully pointed out that WO 98/28859 also cited in the afore-referenced JP counterpart Office Action, was cited in Applicant's IDS dated October 28, 2004, the 1449 form of which was initialed by the Examiner as being considered.

All issues having been addressed, the subject application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited. A Notice of Allowance is thereby requested. Should any unresolved issues remain, the Examiner is invited to call the undersigned at the telephone number indicated below.

Respectfully submitted:

Christine Wilkes Beninati July 1, 2009  
Christine Wilkes Beninati Date

Reg. No.: 37,967

Customer No.: 29683

HARRINGTON & SMITH, PC  
4 Research Drive  
Shelton, CT 06484-6212

Telephone: (203) 925-9400  
Facsimile: (203) 944-0245

**CERTIFICATE OF MAILING**

S.N.: 09/980,377  
Art Unit: 2618

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

J. Droniah  
Name of Person Making Deposit

July 1, 2009  
Date